

REMARKS

Response to Restriction Requirement

In the June 14, 2004 Office Action, the Examiner imposed restriction requirement upon:

- Group I. Claims 1-29, directed to an apparatus; and
- Group II. Claims 30-40, directed to a process.

Specifically, the Examiner stated that "Inventions I and II are related as process and apparatus for its practice," but asserted that such inventions are distinct because the process as claimed can be practiced by another materially different apparatus, specifically because "the process for sensing concentration with a thermopile detector can be practice with an apparatus that does not use an infrared radiation source" (see the Office Action, page 2, paragraph 2).

In response, Applicant has hereby amended the process claim 30, from which claims 31-40 depend.

The Group II process claims 30-40 as amended are directed to a process which includes the step of "sensing concentration of a selected component of said fluid by transmitting infrared radiation from an infrared radiation source through a fluid sampling region for said fluid and receiving the transmitted infrared radiation via a thermopile detector."

Therefore, the Examiner's assertion that the process as claimed the process as claimed can be practiced by another materially different apparatus is incorrect, in view of the amendment of claim 30.

Applicant hereby traverses the restriction requirement imposed by the Examiner and requests the Examiner to consolidate and designate Groups I and II claims as a single group for future examination and prosecution.

Nevertheless, Applicant hereby elects the apparatus claims 1-29 for future examination, in the event that the Examiner refuses to consolidate Groups I and II claims.

Further, if the Examiner insists that the non-elected Group II claims 30-40 be withdrawn, Applicant hereby manifests the intention to rejoin the non-elected process claims 30-40 at a later time when the elected apparatus claims 1-29 are determined to be allowable, on the basis that the non-elected process claims 30-40 as amended herein include all the limitations of the elected apparatus claims 1-29 and therefore can be rejoined for examination under the provisions of MPEP §821.04 once the apparatus claims 1-29 are found allowable.

CONCLUSION

No fee is rendered payable for this Amendment. Nevertheless, the Office is hereby authorized to charge any additional fees that are necessary for entry of this Amendment to Deposit Account No. 08-3284 of Intellectual Property/Technology Law.

Please continue examination of the application on the basis of claims 1-40 now pending and constituting the claims of the application.

Respectfully submitted,



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